

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA)
)
) Case No. 3:12-CR-125 JD
)
JUAN GALLARDO (04))

ORDER

No objections have been filed to the magistrate judge's findings and recommendation upon a plea of guilty issued on June 3, 2012 [DE 66]. The court does note that the indictment incorrectly refers to a violation of 18 U.S.C. § 841(a)(1), rather than of 21 U.S.C. § 841(a)(1). But the typographical error in the Indictment is not of concern to the Court. "An indictment may be modified, either physically or constructively . . . to correct for a typographical or clerical error or a misnomer" without resubmission to the grand jury. *United States v. Leichtnam*, 948 F.2d 370, 376 (7th Cir. 1991). The Plea Agreement properly indicates the statute supporting the charges, and the offense conduct matches that statute.

Additionally, the Court notes that the report and recommendation does reference 21 U.S.C. § 846, but does not also include a reference to 21 U.S.C. § 841(a)(1), whereas both statutes are shown violated by the Plea Agreement. Accordingly, the court now ADOPTS the findings and recommendations **as modified to incorporate both statutes of conviction**, ACCEPTS defendant Juan Gallardo's plea of guilty, and FINDS the defendant guilty of Count 1 of the Indictment, in violation of 21 U.S.C. §§ 841(a)(1) and 846.

SO ORDERED.

ENTERED: June 28, 2013

/s/ JON E. DEGUILIO
Judge
United States District Court